



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2019

Ms. Julie Pandya Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-29363

Dear Ms. Doshier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 792201 (Ref. No. 110039).

The City of Allen (the "city"), which you represent, received a request for signed agreements or contracts between named parties pertaining to a specified project. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of MCTT, LLC ("MCTT"). Accordingly, you state, and provide documentation showing, you notified MCTT of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from MCTT explaining why the submitted information should not be released. Therefore, we have no basis to conclude MCTT has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information

would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest MCTT may have in the information.

Section 552.131 of the Government Code relates to economic development information and provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* § 552.131(a). This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); ORDs 552 at 5, 661 at 5-6. We note section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic development negotiations. Further, we have not received arguments from MCTT explaining the information at issue contains its trade secrets or its commercial or financial information. *See* Gov't Code § 552.305(d)(2)(B). Because MCTT has not demonstrated the information at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the submitted information may be withheld pursuant to section 552.131(a).

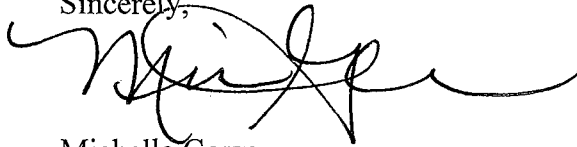
Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* § 552.131(b). Section 552.131(b) protects the interests of governmental bodies, not third parties. You assert the submitted letter of intent pertains to ongoing negotiations for a city

project. Upon review, however, we find you have failed to demonstrate the information at issue reveals financial or other incentives that are being offered to a business prospect. Thus, we conclude the city may not withhold any of the submitted information under section 552.131(b) of the Government Code. The city must release the submitted information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Michelle Garza
Attorney
Open Records Division

MRG/be

Ref: ID# 792201

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)